

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-136-C

In Re: Office of Regulatory Staff Petition to)	
Review FCC Mandated Reductions to)	
Intrastate Access Tariffs)	MOTION
_____)	

The South Carolina Office of Regulatory Staff (“ORS”), respectfully requests a modification of Commission Order No. 2012-479 in the above-captioned action. In support of its Motion, ORS would respectfully show unto this honorable Commission the following:

1. On May 15, 2012, the South Carolina Telephone Coalition (“SCTC”) filed a Petition in this docket asking the Commission to confirm that revenues received from the Interim LEC Fund (“ILF”) are intrastate switched access revenues, and to provide instructions as to the reporting and treatment of such revenues for purposes of implementing the recent order of the Federal Communications Commission (“FCC”) regarding intercarrier compensation reform.¹

2. The Commission issued Order No. 2012-479 on June 20, 2012, finding that SC ILF revenues are revenues from bulk-billed intrastate switched access service and, therefore, that ILF should be treated as tariffed switched access for purposes of determining participating local exchange carriers’ Eligible Recovery amount in transitioning to the federal recovery mechanism. The Commission directed those LECs who receive funding from ILF to make the appropriate filings, including supporting documentation, to reflect reductions in the rates for intrastate switched access in

¹ *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; and FCC 11-161, rel. Nov. 18, 2011 (“*USF-ICC Reform Order*”).

accordance with the FCC's *USF-ICC Reform Order*. The Commission further directed ORS, as Administrator of the ILF, to "use reasonable methodologies and procedures, consistent with the FCC's *USF-ICC Reform Order*, to calculate and to transition the terminating switched access portion of the ILF for each participating LEC into the federal recovery mechanism, and to make appropriate adjustments to the ILF to account for such transition."²

3. On or around June 18, 2012, SCTC members filed interstate access tariffs and backup information in compliance with orders of the FCC implementing universal service and intercarrier compensation reform.³ In accordance with Commission Order No. 2012-479, the interstate access tariffs and backup information filed with the FCC included Interim LEC Fund revenues in the companies' Eligible Recovery amounts and, therefore, in their calculation of the tariffed Access Recovery Charge ("ARC") implemented by the companies.

4. On July 2, 2012, the Acting Chief of the Wireline Competition Bureau, by delegated authority, issued an order suspending for one day the ARC rates contained in the 2012 annual access tariffs of all issuing carriers that are charging an ARC, and instituting an investigation of the tariffs.⁴ The order directed all issuing carriers charging an ARC to keep an accurate account of all amounts received that are associated with the rates subject to the investigation.⁵ The Wireline Competition Bureau Chief subsequently issued an Order on Reconsideration, in which it reconsidered its decision to suspend and investigate the ARC rates contained in the annual access tariffs filed by certain carriers, including CenturyLink, Frontier Communications, and Windstream Communications.⁶ The Bureau concluded that those carriers had either correctly calculated their Fiscal Year 2011 revenues and their

² Order No. 2012-479 at p. 9, Findings and Conclusions ¶ 5.

³ See *USF-ICC Reform Order*; see also *In the Matter of Material to be Filed in Support of 2012 Annual Access Tariff Filings*, WCB/Pricing File No. 12-08, DA 12-482 (Wireline Comp. Bur., rel. Mar. 28, 2012) (Scheduling Order) and DA 12-575 (Wireline Comp. Bur., rel. Apr. 19, 2012) (Tariff Review Plan Order).

⁴ *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, Order, DA 12-1037, WCB/Pricing No. 12-09 (rel. July 2, 2012) ("Suspension Order").

⁵ *Id.* at ¶ 12.

⁶ *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, Order, DA 12-1231, WCB/Pricing No. 12-09 (rel. August 1, 2012) ("Order on Reconsideration").

Eligible Recovery amounts in their initial tariff filings or had corrected such calculations in subsequent amendments to their tariff filings.⁷

5. At this time, the scope of the FCC's investigation is not clear. However, the FCC indicated that it would be reviewing the manner in which carriers calculated their Eligible Recovery amounts.⁸ The FCC will issue a designation order identifying the specific issues that will be the subject of the investigation, which "may include, but not be limited to," the issues identified in the *Suspension Order*.⁹ On or about August 22, 2012, SCTC filed a letter in this docket updating the Commission as to the status of the tariffs for each of the SCTC members. ORS understands that the FCC is working to try to quickly clear as many tariffs as possible, and expects the majority if not all of the SCTC company tariffs to be cleared by the FCC before it issues its designation order in the near future. ORS believes the forthcoming designation order will also clarify the scope of the FCC's investigation. To the extent any uncertainty remains following issuance of the FCC's designation order, ORS anticipates that all issues will be finally resolved not later than December 15, 2012.

6. The Commission acted properly and within the scope of its authority in determining that ILF revenues constitute intrastate switched access revenues in South Carolina and that such revenues are appropriately included in the federal recovery mechanism. However, in light of the tariff suspension and investigation, ORS respectfully requests a modification of Commission Order No. 2012-479 until such time as the FCC's tariff investigation is concluded and the federal recovery mechanism is finalized. ORS requests that the Commission modify Order No. 2012-479 to allow ORS to continue to collect contributions to ILF, including the portion attributable to terminating switched access, and allow ORS to withhold terminating switched access funds from distribution until such time

⁷ *Id.* at ¶ 4.

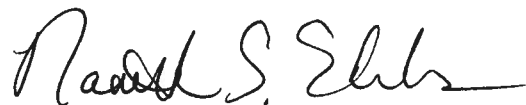
⁸ *See id.* at ¶¶ 5-7.

⁹ *Id.* at ¶ 8.

as the FCC concludes its investigation, and not later than December 15, 2012.¹⁰ It is ORS's understanding that the FCC will begin to disburse CAF funds which include ILF revenues in the Eligible Recovery amount on or about the end of this month, August 2012. As such, ORS proposes that it be permitted to continue to collect contributions to the ILF, but requests that the Commission direct ORS to withhold distribution to the LECs of the dollar amount attributed to terminating switched access so as to prevent any possible double recovery. The withheld distribution amount would be retained by ORS until the FCC completes its investigation, but not later than December 15, 2012. It is ORS's understanding that the FCC is expected to complete its investigation and issue an order, possibly as early as the beginning of September, 2012. ORS, as ILF fund administrator, requests the flexibility to determine the manner in which contributed funds are returned, credited or disbursed to the appropriate persons.

WHEREFORE, ORS respectfully requests that this honorable Commission modify its Order No. 2012-479 to direct ORS, as fund administrator, to continue to collect ILF contributions and withhold disbursement of the amount attributed to terminating switched access until the FCC concludes its investigation as it relates to ILF which is currently anticipated to be as early as September, 2012, and not later than December 15, 2012; and grant such other and further relief as is just and proper.

Respectfully submitted,



Nanette S. Edwards
Office of Regulatory Staff

August 22, 2012

¹⁰ The FCC's investigation should be concluded by December 3, 2012. See 47 U.S.C. § 204(a)(2)(A) (tariff investigations must be concluded within 5 months after the date that the charge, classification, regulation, or practice subject to the investigation becomes effective).